

PEOPIL
The Pan-European Organisation of Personal Injury Lawyers
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**Proposal for a
REGULATION OF THE EUROPEAN PARLIAMENT AND THE
COUNCIL ON LIMITATION PERIODS FOR COMPENSATION
CLAIMS OF VICTIMS OF CROSS-BORDER ROAD TRAFFIC
ACCIDENTS
IN THE EUROPEAN UNION**



1. SCOPE

In Europe there is a **clear and significant divergence** in respect of **limitation or prescription periods**¹: national limitation laws vary considerably between Member States.

There are significant differences concerning:

- ❑ length of limitation periods;
- ❑ commencement of the running of time;
- ❑ concept of the “date of knowledge” of the person injured;
- ❑ the discretionary power of the courts to extend the commencement of the running of the limitation period beyond the date on which the accident accrued or the “date of knowledge” of the injured person (extension of the limitation period);
- ❑ commencement of the running of time in the case of disabled persons and minors;
- ❑ the ability and way to stop or interrupt the running of limitation;
- ❑ burden of proof and evidence governing the expiry of limitation defence.

The extent of such divergences give rise to **undesirable consequences for the victims of road traffic accidents in cross-border litigation**, creating obstacles for ‘accident-abroad victims’, when required to rely upon foreign law (generally, under Article 4 of the Regulation (EC) No 864/2007 of the European Parliament and of the Council of 11 July 2007 on the law applicable to non-contractual obligations (Rome II), the applicable law is the law of the country where the accident occurred).

In particular, the following issues arise in relation to cross-border road traffic accidents:

- ❑ in some countries minors and persons under disability are not subject to any special protection in respect of the running of limitation, thus minors and persons under a disability may lose rights to claim compensation which they would otherwise retain, when injured in a Member State other than their own;
- ❑ in some countries the only way to stop the running of time for limitation purposes is to issue or serve proceedings: in cross-border litigation such an approach can generate significant problems since investigation into the circumstances of the accident and negotiations will by necessity take longer; an inability to prevent the limitation clock from continuing to run may place the victim in the disadvantageous position of having to incur considerable costs at an early stage by issuing and serving proceedings before the possibility of concluding investigations and negotiations.

¹ Common law countries apply the former terminology; the latter expression is applied by civil law countries.

PRACTICAL DIMENSION OF THE PROBLEM	
Negative effects on victims arising from limitation law/prescription defences	
Delay and unnecessary distress and upset for the victim and their family	
Need to issue court proceedings	delay
Significant increase in victim's legal costs	
Victim significantly delayed in obtaining an interim payment to fund his rehabilitation treatment and prejudice to victim's quality of life	
Victim's right to compensation denied	
Negative effects on insurance companies and Member States	
Increase of litigation costs also for insurance companies and compensation bodies	

Given the current divergences in relation to limitation periods and that Directive 2009/103/EC of the European Parliament and of the Council of 16 September 2009 (relating to insurance against civil liability in respect of the use of motor vehicles) does not provide any rule enabling victims and insurance companies, claim representatives, compensation bodies, lawyers and judges to solve the problems arising from these divergences, there is sufficient justification and a real need for the setting of **common minimum requirements** at a European level through legislation in relation to claims available under Directive 2009/103/EC to injured parties following an accident in a Member State other than that of their residence.

Such legislative initiative should take into account the following needs:

- ❑ to strike a balance of fairness between litigants in respect of limitation law issues;
- ❑ to introduce special rules protecting minors and persons under disability in respect of limitation law issues;
- ❑ to facilitate the interruption and/or suspension of limitation periods in order to avoid the need for the issue and service of formal proceedings for limitation purposes only;
- ❑ to introduce a discretionary power permitting the courts to extend the time limit taking into account the reasons for the delay on the part of the foreign injured person, and any prejudice suffered by the defendant by reason of the failure to issue proceedings within the original limitation period.

The harmonization should consider **all relevant aspects** (the length of the limitation period, the commencement and expiration of the period, the grounds of suspension or interruption of the period), and should apply to all pecuniary and non-pecuniary damages arising from cross-border traffic accidents.

Moreover PEOPIL finds that the preferred instrument is a **regulation of the European Parliament** in preference to a directive which would leave a residual margin for undesirable divergences.

2. THE PEOPIL PROPOSAL

2.1. Material scope

The PEOPIL Proposal (see **Articles 1 and 2**) aims to introduce a Regulation that applies to the claims provided by Directive 2009/103/EC of the European Parliament and of the Council of 16

September 2009 (relating to insurance against civil liability in respect of the use of motor vehicles) for accidents occurring in a Member State other than the Member State of residence of the injured party which are caused by the use of vehicles insured and normally based in a Member State.

This limited scope of the PEOPIIL Proposal is justified on the basis that presently and given the wide differences existing between Member States in relation to limitation/prescription rules, the direct harmonization of Member States' laws by means of a directive or a regulation is not advisable and is, at least to a certain degree, unrealistic; furthermore such level of approximation is likely to meet the justifiable opposition of at least some Member States in the light of the principle of subsidiarity.

It should also be considered that in the area of cross-border road traffic accidents the only claims, already harmonized at the European Union level and available to all claimants irrespective of their residence and of the place of the accident, are the ones provided by Directive 2009/103/EC; following the decision by the European Court of Justice on 13 December 2007 in *FBTO Schadeverzekeringen NV v. Jack Odenbreit*, Case C-463/06, the direct action and claims provided by this Directive are the ones enabling "accident-abroad victims" to seek compensation in their own country of residence. Therefore at least most of the practical problems and negative effects arising from the lack of uniform rules on limitation periods for cross-border road traffic accidents should be solved by adding the proposed legislative intervention to the system provided by the said Directive.

2.2. Suggested uniform rules

The Proposal is fully consistent with principles and suggestions provided by the **European Parliament resolution** with recommendations to the commission on limitation periods in cross-border disputes involving personal injuries and fatal accidents (**2006/2014(INI)**), adopted on 1 February 2007.

Moreover, the PEOPIIL Proposal is consistent with:

- the protection granted to victims of road traffic accidents granted by Directive 2009/103/EC of the European Parliament and of the Council of 16 September 2009;
- fundamental rights, including the right to access to justice, provided by the **Charter of Fundamental Rights of the European Union**; in particular, Article 2: "*everyone has the right to life*"; Article 3: "*everyone has the right to respect for his physical and mental integrity*"; Article 35 (Health care): "*a high level of human health protection shall be ensured*"; Article 7: "*everyone has the right to respect for his or her private and family life ...*"; Article 9: "*right to found a family*"; Article 33: "*the family shall enjoy legal, economic and social protection*"; it is a matter of fact that whenever a remedy is denied a right is not granted.

The PEOPIIL Proposal provides (see **Articles 3 and 4**) for **two different limitation periods**:

1) *General limitation period*

The general limitation period in respect of any claim falling within the scopes of the Regulation shall be **four years (Article 3)**. This suggested period of time reflects that in cross-border litigation the length of time for investigations and negotiations is often much longer than in domestic claims. Furthermore it is an average among the various limitation periods provided by national laws for such claims. It should be noted that also **Recommendation 2 (as to the minimum content of the instrument to be adopted)** of **European Parliament resolution** (2007) suggests that «*The general limitation period should be 4 years*».

2) Longer limitation period

Where the proper law applicable to the claim provides for a limitation period which is longer than four years, such longer period of limitation shall apply (**Article 4**). Where the expiry of the limitation period is relied upon by the defendant as a defence to the claim, the burden shall be upon the claimant to prove by proper evidence the existence of a longer limitation period. This rule is also suggested by **Recommendation 2 (as to the minimum content of the instrument to be adopted)** of **European Parliament resolution**: «*The general limitation period should be 4 years ..., except where the proper law of the claim provides for a longer period, in which case the burden of proving the existence of that longer period is to be discharged by the claimant*».

The Proposal provides for detailed rules for the **computation of limitation periods (Article 6)**. These rules are the same ones provided by the **European Convention on the Calculation of Time-Limits** (ETS No. 076) open for signature by the Member States of the Council of Europe in Basle on 16 May 1972 on the occasion of the V11th Conference of European Ministers of Justice. Following Member States signed the Convention: Austria, Belgium, France, Germany, Italy, Liechtenstein, Luxembourg, Portugal, Sweden, Switzerland. **Recommendation 2 (as to the minimum content of the instrument to be adopted)** of **European Parliament resolution** suggests the adoption of the same provisions: «*The limitation period should expire upon expiry of the last moment of its last day; it should be computed in accordance with the official calendar of the Member State in which the claimant issues proceedings; and the day on which the cause of action arises should not be counted. If a limitation period is extended, the new limitation period should be computed from the date of expiry of the preceding limitation period*».

Furthermore, the PEOPIL Proposal (**Articles from 7 to 11**) provides for a complete and detailed set of rules governing the **commencement of limitation period**. The scheme suggested by the Proposal is largely based on the *English-Irish-Scottish model* and, in particular, on the principle by which the running of the period applicable shall start from: *a*) the date on which the cause of the personal injury accrued; or *b*) the date of knowledge (if later) of the person injured, being the date of knowledge the date on which the person injured first had actual knowledge of the following facts: that the injury, loss or damage in question is significant; and that the injury, loss or damage in question is attributable in whole or in part to the act or omission which is alleged to give rise to liability of the defendant; and the identity of the defendant; and, if it is alleged that the act or omission was that of a person other than the defendant, the additional facts supporting the liability of the defendant. Nevertheless it should be considered that this approach is also applied in a considerable number of *civil law jurisdictions* by statute law (see in *The Netherlands* Article 3:310 (1) BW which provides that the limitation period runs from the day after that on which the victim became aware of both the damage and the person liable; in *Germany* § 852 (1) BGB that requires positive knowledge of both the damage and the person liable) or by case-law (see for example *Italy*). **Recommendation 2 (as to the minimum content of the instrument to be adopted)** of **European Parliament resolution** contains similar provisions: «*The limitation period should start: (1) from the date on which the cause of action for personal injury accrued or from the date of (actual or constructive) knowledge (if later) of the person injured; (2) in the case of claims by heirs, from the date of death or the date of (actual or constructive) knowledge (if later) of the heirs or the estate; (3) in the case of claims by secondary victims, the date of death or the date of (actual or constructive) knowledge (if later) of the secondary victim (fatal accidents) or the date on which the cause of action accrued or the date of (actual or constructive) knowledge (if later) of the person injured (non-fatal accidents)*».

Suspension. The PEOPIL Proposal (**Articles from 12 to 14**) suggests the introduction of a detailed list of cases where limitation periods should be suspended. This part of the Proposal is consistent

with **Recommendation 2 (as to the minimum content of the instrument to be adopted) of European Parliament resolution** which provides that: «*The running of the limitation period should be suspended where the defendant has deliberately, dishonestly, unreasonably or as a result of a mistake concealed the existence of facts or matters giving rise to the liability of the defendant. It should also be suspended during related criminal proceedings/investigations or where there is an outstanding request/claim under the Directive 2000/26/EC of the European Parliament and of the Council of 16 May 2000 on the approximation of the laws of the Member States relating to insurance against civil liability in respect of the use of motor vehicles (Fourth Motor Insurance Directive)*».

Stopping limitation time. Under the PEOPII Proposal (**Articles from 15 to 17**) the running of the limitation period is interrupted by any of the following: a) any claimant's beginning of judicial proceedings; b) any claimant's act, notified to the defendant, aiming at initiating extra-judicial proceedings with the aim of obtaining an instrument which is enforceable as if it were a judgment; c) any claimant's act, notified to the defendant, aiming at initiating negotiations; interruption is effective even if negotiations do not lead to a settlement agreement; d) any other claimant's act, notified to the defendant, capable of informing the defendant of the claimant's intention to claim damages. It should be noted that in this last respect it is sufficient for there to be a letter or any other similar **written warning** in which the claimant unequivocally claims damages, indicating, within the limit of his knowledge, the relevant circumstances of the case. **Recommendation 2 (as to the minimum content of the instrument to be adopted) of European Parliament resolution** suggests following similar provision: «*The limitation period should be interrupted by the commencement of judicial proceedings; any act of the claimant notified to the defendant having the purpose of commencing extra-judicial proceedings; any act of the claimant notified to the defendant having the purpose of initiating negotiations; any other act of the claimant notified to the defendant informing the defendant of the fact of the claimant's claim for damages*».

The PEOPII Proposal (**Articles 19 and 20**) introduces special protection of **minors** and **persons with disabilities** in respect of the running of the limitation period by adopting the English model which is the most protective towards weak persons.

Evidence and burden of proof. The Proposal (**Articles from 21 to 24**) aims to introduce a balance between plaintiffs and defendants in respect of the evidence required to support or oppose a defence concerning the expiration of limitation period. Following rules are suggested by the Proposal: 1) the defendant must support his defence with appropriate evidence within the limit of his subjective or objective knowledge of the circumstances of the case; 2) where the defendant or any other person for whom the defendant is liable has withheld information enabling the claimant to acquire the knowledge and there was a duty to disclose this information to the claimant irrespective of whether the duty existed by virtue of a contract or by way of a provision made by or under a statute or independently of any contract or any such provision, or the claimant had requested for such information, the defendant must give evidence that he had properly disclosed such information or that the claimant has not taken all reasonable steps to obtain the information needed; 3) all circumstances falling exclusively under the subjective or objective knowledge of the claimant must be proved by the claimant.

Finally the PEOPII Proposal (**Article 25**) provides for a (strictly limited as to its scope) **courts' discretionary power** not to strike out time-barred actions. This provision is consistent with the need to preserve a margin of judicial discretion; in particular, this solution is imposed by the need to avoid denials of justice to victims sustaining serious injuries or the loss of a family member, thus the infringement of fundamental rights protected by the Charter of Fundamental Rights of the European Union. It should be noted that also **Recommendation 2 (as to the minimum content of**

the instrument to be adopted) of European Parliament resolution suggests that «Appropriate provisions should be included on ... discretion of the court in applying the limitation period».



Chapter I – Scope and interpretation

Article 1 – Material scope and application.

- (1) The objective of this Council Regulation is to lay down special provisions in relation to rules on limitation of actions applicable to all injured parties entitled to claim compensation
- (a) against
- a.1)* the insurance undertaking covering the person responsible against civil liability under Article 18 («*Direct right of action*») of Directive 2009/103/EC of the European Parliament and of the Council of 16 September 2009,
- a.2)* or against the compensation body provided by Articles 24 («*Compensation bodies*») and 25 («*Compensation*») of Directive 2009/103/EC of the European Parliament and of the Council of 16 September 2009,
- (b) and in respect of any loss or injury or death resulting from accidents occurring in a Member State other than the Member State of residence of the injured party which are caused by the use of vehicles insured and normally based in a Member State.
- (2) This Council Regulation shall also apply to these provisions shall also apply to injured parties resident in a Member State and entitled to compensation in respect of any loss or injury or death resulting from accidents occurring in third countries whose national insurer's bureaux, as defined in Article 6 of Directive 2009/103/EC, have joined the green card system whenever such accidents are caused by the use of vehicles insured and normally based in a Member State.
- (3) This Council Regulation does not apply to or affect any claim for damages made in criminal proceedings, which claims are subject to the applicable law of the Member State in which criminal proceedings take place.
- (4) This Council Regulation does not apply to any other action, available to the injured parties who fall within the material scope of the present Regulation, other than the direct action provided by Article 18 («*Direct right of action*») of Directive 2009/103/EC and the action provided against compensation bodies by Article 25 («*Compensation*») of the same Directive 2009/103/EC.
- (5) Any choice of law specified by this Regulation shall be applicable irrespective of whether such law is a law of a Member State.

Article 2 – Interpretation.

- (1) For the purposes of this Regulation, a “limitation period” is the period of time after the expiry of which a defendant may present a complete defence to the claim by reason that a claim for damages has not been made within the limitation period.
- (2) In this Regulation:
- a) ‘accident’ is any road traffic accident which falls within the material scope of the present Regulation;
- b) ‘claim representative’ is the body provided by Article 21 («*Claims representatives*») of Directive 2009/103/EC of the European Parliament and of the Council of 16 September 2009 relating to insurance against civil liability in respect of the use of motor vehicles, and the enforcement of the obligation to insure against such liability;

- c) ‘claimant’ includes any party claiming damages under Directive 2009/103/EC of the European Parliament and of the Council of 16 September 2009 in relation to accidents that fall within the material scope of the present Regulation; for these purposes a claimant may be either a primary victim or a secondary victim or an heir or an estate, or any person entitled under Directive 2009/103/EC of the European Parliament and of the Council of 16 September 2009 to pursue a claim on behalf or as a representative of the claimant or as the claimant’s heir or estate;
- d) ‘compensation body’ is the body responsible for providing compensation to injured parties provided by Articles 24 («Compensation bodies») and 25 («Compensation») of Directive 2009/103/EC of the European Parliament and of the Council of 16 September 2009;
- e) ‘competent court’ is any court which is required to apply this Regulation;
- f) ‘damages’ includes all kinds of damages, pecuniary and non-pecuniary, either occurred to persons or vehicles, recoverable under Directive 2009/103/EC of the European Parliament and of the Council of 16 September 2009;
- g) ‘defendant’ includes any person, entity or body responsible under Directive 2009/103/EC of the European Parliament and of the Council of 16 September 2009 to handle and settle claims and/or to provide compensation for damages in relation to any accident which falls within the material scope of the present Regulation;
- h) ‘Directive 2009/103/EC of the European Parliament and of the Council of 16 September 2009’ is the directive (‘codified version’) relating to insurance against civil liability in respect of the use of motor vehicles, and the enforcement of the obligation to insure against such liability;
- i) ‘extra-judicial proceedings’ and ‘legal proceedings’ includes arbitration, alternative dispute resolution, mediation procedures and any proceedings, including the procedures provided by Directive 2009/103/EC of the European Parliament and of the Council of 16 September 2009 against insurance undertakings, claim representatives and compensation bodies, other than judicial proceedings enabling the parties to settle the dispute;
- j) ‘information centre’ is the information centre provided by Article 23 («Information centres») of Directive 2009/103/EC of the European Parliament and of the Council of 16 September 2009;
- k) ‘injured party’ means any person entitled to compensation in respect of any loss or injury or death caused by an accident which falls within the material scope of the present Regulation;
- l) ‘insurance undertaking’ means an undertaking which has received its official authorisation in accordance with Article 6 or Article 23(2) of Directive 73/239/EEC;
- m) ‘judicial proceedings’ includes any proceedings in a court of law enabling the claimant to claim damages and including criminal investigation or criminal proceedings; this expression also includes preliminary proceedings necessary in order to start a judicial action;
- n) ‘person liable’ is any person who, with his conduct, in whole or in part caused the accident;
- o) ‘personal injury’ includes any disease and any impairment, whether temporary or permanent, of a person’s physical or mental condition, and “injury” and cognate expressions shall be construed accordingly;
- p) ‘primary victim’ includes any person injured or killed or sustaining any other loss or damages recoverable under Directive 2009/103/EC of the European Parliament and of the Council of 16 September 2009 as a result of an accident which falls within the material scope of the present Regulation;
- q) ‘secondary victim’ includes any person other than the primary victim injured or killed by an accident, which falls within the material scope of the present Regulation, who is entitled to claim damages under Directive 2009/103/EC of the European Parliament and of the Council of 16 September 2009;
- r) ‘vehicle’ means any motor vehicle intended for travel on land and propelled by mechanical power, but not running on rails, and any trailer, whether or not coupled.

Chapter II – Uniform rules

Section One Limitation periods

Article 3 – General limitation period.

Except in cases where Articles 4 or 5 apply, the general limitation period in respect of any claim falling within Article 1 shall be four years.

Article 4 – Longer limitation period.

(1) Where the proper law applicable to any claim available to the claimant against the person liable for the accident provides for a limitation period which is longer than four years, such longer limitation period shall apply.

(2) Where the expiry of the limitation period is relied upon by the defendant as a defence to the claim, the burden shall be upon the claimant to prove by proper evidence the existence of a longer limitation period in accordance with subparagraph 1.

Article 5 – Limitation period for a claim established by judicial proceedings or other legal proceedings.

(1) The limitation period for the enforcement of a claim for damages established by a final judgment shall be ten years.

(2) The same limitation period shall apply to the enforcement of a claim for damages established by an arbitral award or any other instrument which is enforceable as if it were a final judgment.

Article 6 – Computation of limitation periods.

(1) In all cases within the scope of this Regulation the expiry of the limitation period shall occur on the last day of the limitation period.

(2) The relevant limitation period shall be computed in accordance with the regular calendar of the Member State in which the claimant issues proceedings.

(3) The day on which the cause of action arises is not counted for the purposes of the computation of the limitation period. The expiry of the limitation period occurs upon the expiry of the last moment of the final day of the limitation period.

(4) Where the final day of the limitation period falls on a recognised public holiday, the final day shall be postponed to the following business day.

(5) In the case of the extension of a limitation period, the new limitation period shall be computed from the date of the expiry of the preceding limitation period.

Section Two Commencement: the starting date

Article 7 – Beginning of the limitation period in personal injury cases.

(1) Except where Articles 8 and 9A(1) and (2) apply, the commencement of the applicable period provided in Articles 3 and 4 above shall start from:

(a) the date on which the accident occurred; or

- (b) the date of knowledge (if later) of the injured party.
- (2) The date of knowledge is the date on which the injured party first had knowledge of the following facts:
- (a) that the injury, loss or damage in question was significant; and
 - (b) that the injury, loss or damage in question was attributable in whole or in part to the act or omission which is alleged to give rise to the accident; and
 - (c) the identity of the person liable and/or the insurance undertaking covering the person responsible against civil liability and/or the claim representative and/or the compensation body.
- (3) For the purposes of this Article, an injured party shall be regarded as having knowledge of the fact that the injury, loss or damage is significant:
- (a) if he has knowledge of the full extent of the injury, loss or damage, or
 - (b) if a reasonable person with the knowledge of the extent of the injury or damage of the injured person would consider it sufficiently serious to justify instituting proceedings in respect of the injury, loss or damage.

Article 8 – Beginning of the limitation period in the case of death of the primary victim: claims by the heirs or the estate.

- (1) Where the primary victim dies before the expiry of the applicable limitation period provided for in Articles 3, 4 or 7 above, and irrespective of whether the death was caused by the accident, the commencement of the applicable limitation period in respect of any claim for damages which survives for the benefit of the heirs or the estate of the primary victim shall start from:
- (a) the date of death; or
 - (b) the date of knowledge (if later) of the heirs or the estate.
- (2) The date of knowledge is the date on which the heirs or the estate first had knowledge of:
- (a) the facts which give rise to the claim, including the fact that the injury, loss or damage, or death in question is attributable in whole or in part to the accident; and
 - (b) the identity of the of the person liable and/or the insurance undertaking covering the person responsible against civil liability and/or the claim representative and/or the compensation body.
- (3) Where there are two or more persons for whose benefit a claim is made, the applicable limitation period shall apply separately in relation to each of them.

Article 9 A – Beginning of the limitation period in claims by secondary victims: fatal accidents.

- (1) In the case of the death of the primary victim, the applicable limitation period provided for in Articles 3 and 4 above shall run from:
- (a) the date of death; or
 - (b) the date of knowledge (if later) of the secondary victim.
- (2) For the purposes of subparagraph (1) the date of knowledge is the date on which the secondary victim first had knowledge of:
- (a) the facts which gave rise to the claim, including the fact that the death is attributable in whole or in part to the act or omission which is alleged to give rise to the accident;
 - (b) the identity of the of the person liable and/or the insurance undertaking covering the person responsible against civil liability and/or the claim representative and/or the compensation body.

Article 9 B – Beginning of the limitation period in claims by secondary victims: survival of the primary victim.

(1) In the case of any other claim of a secondary victim other than as provided for in Article 9A the applicable limitation period provided in Articles 3 and 4 above shall run from:

- (a) the date on which the accident occurred; or
- (b) the date of knowledge (if later) of the injured person; or
- (c) in respect of the secondary victim's injury only, the date (if later) on which the secondary victim first had knowledge of the following facts:
 - (i) that his injury was significant;
 - (ii) that the injury in question was, in whole or in part, a consequence of the accident giving rise to the claim of the primary victim.

Article 10 – Constructive knowledge.

(1) For the purposes of this Regulation, a claimant's knowledge includes knowledge which he might reasonably have been expected to acquire:

- (a) from facts observable or ascertainable by him, or
- (b) where he has acted reasonably in seeking appropriate expert advice, from facts ascertainable by him with the support of such advice.

(2) In determining for the purposes of this Article

- (a) the knowledge which a claimant might reasonably have been expected to acquire, or
- (b) whether a claimant has acted unreasonably in not seeking appropriate advice,

his circumstances and abilities (so far as relevant) shall be taken into account.

(3) Unless the claimant has acted unreasonably in not seeking advice from an expert, the claimant shall not be treated as having constructive knowledge of any fact which an expert might have acquired.

(4) Where an expert has been consulted, the claimant shall not be deemed to have constructive knowledge of any fact or matter which the expert acquired but failed to communicate to the claimant, or any fact or matter which the expert failed to acquire.

(5) Unless the claimant has acted unreasonably in not taking all reasonable steps to obtain legal advice, the claimant shall not be deemed to have constructive knowledge of whether particular facts or circumstances would, as a matter of law, give rise to a valid claim for damages.

Article 11 – Commencement of the limitation period for a claim established by judicial proceedings or other legal proceedings.

The limitation period provided in Article 5 begins to run from the date on which the judgment or arbitral award becomes final, or the other instrument becomes enforceable, but not before such time as the debtor is required to effect payment of the damages awarded or ordered to be paid.

**Section three
Suspension**

Article 12 – Suspension due to the conduct of the defendant.

The running of the limitation period shall be suspended in any case where the person liable and/or the defendant has deliberately or dishonestly or unreasonably or as a result of a mistake concealed the existence of facts or matters giving rise to the liability of the person liable or the duty to provide compensation, until such time as the concealment or mistake has been discovered or (if earlier) the claimant first had knowledge of the concealed facts or matters or the mistake (as the case may be).

Article 13 – Suspension due to the pending of criminal proceedings.

- (1) Whenever there are criminal investigations or proceedings pending in respect of the damaging event that gave rise to the injury, loss or damage, irrespective of whether the claimant has been informed of such investigations or proceedings, no limitation period under this Regulation shall run against the claimant until:
 - (a) a binding decision has been issued, or
 - (b) the investigations or proceedings have otherwise been terminated and the termination of such investigations or proceedings has been notified to the claimant, or
 - (c) such date as the claimant might reasonably have been expected to acquire knowledge of such termination.
- (2) For the purposes of permitting a foreign claimant to acquire the knowledge of current criminal investigations or proceedings, each Member State shall
 - (a) establish or approve a national information centre responsible:
 - (i) for keeping a register of all criminal investigations or pending proceedings involving a foreign primary victim;
 - (ii) for providing written answers to reasoned requests for information made by or on behalf of a foreign primary victim or secondary victim or the information centre of another Member State within three months from the receipt of such a request.
 - (b) establish an obligation on national criminal investigating authorities to provide a written answer to any reasoned request for information made by or on behalf of a foreign primary victim or secondary victim or the information centre of another Member State within three months from the receipt of such a request.

Article 14 – Suspension due to the pending of extra-judicial proceedings

- (1) No limitation period under this Regulation shall run against the claimant during any period of time in which there is an extra-judicial proceedings pending.
- (2) No limitation period shall run against the claimant during the time the claimant waits for the information asked to the information centre provided by Article 23 («Information centres») of Directive 2009/103/EC of the European Parliament and of the Council of 16 September 2009.

Section four
Interruption

Article 15 – Interruption of the running of the limitation period.

- (1) The running of the limitation period provide for in Articles 3 and 4 shall be interrupted by any of the following:
 - (a) the commencement of judicial proceedings against any defendant or any person liable; interruption is effective from the date of issue of the proceedings even where the court in which the claim has been started lacks competence or jurisdiction;
 - (b) any act of the claimant notified to the defendant and or the person liable having the purpose of commencing extra-judicial proceedings with the aim of obtaining an instrument which is enforceable as if it were a judgment; interruption is effective from the date on which a formal request that the claim should be adjudicated upon is received by the defendant and/or the person liable, even where such extra-judicial proceedings do not in fact take place;

- (c) any act of the claimant notified to the defendant and/or the person liable having the purpose of initiating negotiations; interruption is effective even where negotiations do not in fact lead to settlement of the claim;
 - (d) any other act of the claimant notified to the defendant and/or the person liable informing the defendant and/or the person liable of the fact of the claimant's claim for damages.
- (2) For the purposes of subparagraph (1)(d) it is sufficient that a letter or any other similar written notification is sent to the insurance undertaking covering the person responsible against civil liability and/or to the claim representative or the compensation body in which the claimant unequivocally claims compensation specifying, within the limit of his personal knowledge, the relevant circumstances of the case, the basis upon which the claimant holds the person responsible liable and identifying the damages sustained.
- (3) The letter or any other similar written notification provided for in subparagraph (2) shall be written in the language of the Member State where the person liable has his residence or domicile or place of business, unless the letter or any other similar written notification is sent to the claim representative or the compensation body of the Member State where the claimant is based.
- (4) The running of the limitation period shall also be interrupted by the acknowledgment of the claimant's right to claim compensation by the person, entity or body against whom such right can be enforced.
- (5) For the purposes of subparagraph (4) the defendant and/or the person liable acknowledges the claimant's claim:
- (a) by making part payment, or
 - (b) by the payment of interest, or
 - (c) by a written acknowledgment of liability, even where there is a dispute, whether as to part or the whole of the claim, by the defendant and/or the person liable as to the extent of any loss or the quantification of any damages suffered.

Article 16 – Interruption of the limitation period in claims established by judicial proceedings or other legal proceedings.

The running of the limitation period provided for in Article 5 shall be interrupted by any act of execution or any other attempt to enforce a claim established by judicial proceedings or other legal proceedings.

Article 17 - Effect and duration of interruption.

- (1) Except where subparagraphs (2), (4) and (11) below apply, a new limitation period of three years begins to run as a result of interruption.
- (2) Where interruption has occurred by reason of Article 15(1)(a), the limitation period provided for in Article 5(1) does not begin to run until the judgment in the proceedings becomes final.
- (3) Where interruption has occurred by reason of Article 15(1)(a) and such judicial proceedings have been terminated prior to judgment, the new limitation period provided for in subparagraph (1) begins to run from the date on which the claimant knew or reasonably ought to have known of the termination of the judicial proceedings.
- (4) Where interruption has occurred by reason of Article 15(1)(b), the new limitation period provided for in subparagraph (1) does not begin to run until the date on which the extra-judicial proceedings were terminated prior to the obtaining of an instrument enforceable as if it were a judgment.
- (5) Where interruption has occurred by reason of Article 15(1)(b) and an instrument enforceable as if it were a judgment has been obtained, the limitation period provided for in Article 5(2) does not begin to run until such instrument becomes enforceable.

- (6) In any case where the interruption has occurred by reason of Article 15(1)(a) or (b), the new limitation period begins from the date on which proceedings have been terminated.
- (7) Where interruption has occurred by reason of Article 15(1)(c), the new limitation period provided for in subparagraph (1) begins to run one month from the date the defendant notified the claimant in writing of the termination of negotiations.
- (8) Where interruption has occurred by reason of Article 15(1)(d), the new limitation period provided for in subparagraph (1) begins to run from the date on which the defendant and/or the person liable received the claimant's letter of claim or any other similar written notification made by the claimant.
- (9) For the purposes of subparagraph (8) the burden of proof that the letter of claim or any other written notification has been sent shall be on the claimant; the defendant shall be deemed to have received the claimant's communication within two weeks from the sending of the letter of claim or notification, unless the claimant proves that the defendant in fact received the letter or other notification within a shorter period of time or the defendant disproves the presumption of receipt.
- (10) Where interruption has occurred by reason of Article 15(4) and the claimant has knowledge of the defendant's acknowledgment prior to initiating any of the actions specified in Article 15(1), the new limitation period provided for in subparagraph (1) begins to run from the date on which the claimant knew of the defendant's acknowledgment.
- (11) Where interruption has occurred by reason of Article 15(4) and the claimant has knowledge of the defendant's acknowledgment after initiating any of the actions specified in Article 15(1), the effect and duration of the interruption shall be assessed in accordance with subparagraphs (2), (3), (4), (5), (6) and (7).
- (12) Where interruption has occurred by reason of Article 16, the limitation period provided for in Article 5 applies and begins to run again as a result of each act initiating execution or each reasonable attempt at execution undertaken by the claimant.
- (13) Where there is more than one defendant and/or person liable, for the purposes of Article 15(4) the defendant's and/or the person liable's acknowledgment interrupts the running of limitation only against that particular defendant or the insurance undertaking or the claim representative or the compensation body covering the person responsible against civil liability.
- (14) The interruption of the running of limitation against the person liable also has effect against the insurance undertaking or the claim representative or the compensation body covering the person responsible against civil liability.

Article 18 – Interruption of the new limitation period.

The new limitation period provided for in Article 17(1) can only be further interrupted by the commencement of judicial proceedings.

Section five
Minors and Persons under disability

Article 19 – Minors.

- (1) Where the injured person is under the age of 18 at the date when the accident occurred, any limitation period under this Regulation, shall be treated as expiring no earlier than the period of four years from the date on which the injured person attains the age of 18, unless this person lacks the necessary knowledge as defined in Section two.
- (2) Where the injured person ("the relevant person") is under a disability on the date on which he attains the age of 18, the limitation period shall run from this date in all cases where the knowledge of the person who has responsibility for the affairs and supervision of the relevant person ("the

responsible person”) may be imputed to the knowledge of the injured person, except in cases where the claim is brought against the responsible person.

(3) Where the date of knowledge of the responsible person is determined before the relevant person attains the age of 18, for the purposes of this subsection the date of knowledge shall be determined as at the date immediately following the date on which the relevant person attains the age of 18.

(4) For the purposes of this Article a person has responsibility for the affairs and supervision of the relevant person where:

- (a) he is a member of the relevant person’s family who has attained the age of 18 and is responsible for the day to day care of the relevant person; or
- (b) he is a person appointed or entitled under the law applicable to the claim to conduct proceedings in the name of the relevant person.

Article 20 – Persons under a disability other than minors.

(1) Except where subparagraph (2) below applies, where the injured person (“the relevant person”) was under a disability on the date when the damaging event occurred, any limitation period under this Regulation shall be treated as starting from the date on which the relevant person ceased to be under a disability.

(2) Subparagraph (1) above shall not apply where the relevant person is still under a disability at the expiry of a period of ten years from the date of the damaging event, where

- (a) there is a person (“the responsible person”) who has responsibility for the relevant person; and
- (b) the responsible person is not a defendant to the claim.

(3) For the purposes of subparagraph (2) any limitation period under this Regulation shall run from the earlier of the following dates:

- (a) the date of knowledge of the responsible person, or
- (b) the date of knowledge of any person who subsequently acts in the capacity of the responsible person for the relevant person, or
- (c) where the relevant person ceases to be under disability after the expiry of the ten year period, the date of knowledge of the relevant person,

but where any such date of knowledge is determined before the expiry of the ten year period, it shall be treated for the purposes of this subparagraph as falling on the date immediately following the end of the ten year period.

(4) A person is under a disability for the purposes of this Article where:

- (a) he is unable by reason of mental disability to make decisions on matters relating to the cause of the claim concerned, or
- (b) he is unable to communicate such decisions because of mental disability or physical impairment.

(5) In subsection (4) “mental disability” means a disability or disorder of the mind or brain, whether permanent or temporary, which results in an impairment or disturbance of mental functioning.

(6) For the purposes of this Article a person has responsibility for the relevant person where:

- (a) he is a member of the relevant person’s family who has attained the age of 18 and is responsible for the day to day care of the relevant person; or
- (b) he is a person appointed or entitled under the law of the Member State where the claim is brought or of the domicile of the Member State of the disabled person to conduct proceedings in the name of the relevant person.

Section six
Pleading the defence based on the expiry of the limitation period

Article 21 – Pleading the defence.

- (1) For the expiry of the limitation period to have effect, the defendant must plead that fact as a defence.
- (2) For the purposes of subparagraph (1) the defendant must plead the date when the defendant alleges the limitation period expired, and all facts and matters relevant to the determination of the applicable limitation period.
- (3) Where the expiry of the limitation period is not pleaded as a defence or lacks sufficient particularity as specified in subparagraph (2), the court is not entitled of its own motion to consider the defence.

Article 22 – Renunciation of the defence.

- (1) The defendant is not entitled to rely upon the limitation defence where he has previously renounced the limitation defence.
- (2) For the purposes of subparagraph (1) renunciation occurs in any case where the defendant has acted in a manner that is incompatible with an intention to take advantage of the expiry of the limitation period.

Article 23 – Nullity of agreement limiting limitation period.

Any agreement limiting the ability of the claimant to benefit from the rules provided in this Regulation or modifying or disapplying any of the provisions of this Regulation is void, unenforceable and cannot be pleaded to support any defence based on the expiry of the limitation period.

Article 24 – Evidence and Burden of proof.

- (1) The defendant shall adduce in support of the defence provided for in Article 21 appropriate evidence within the limits of the defendant's knowledge taking into account all the circumstances of the case.
- (2) Where it is alleged that the defendant or any other person for whom the defendant is responsible has withheld information permitting the claimant to acquire the requisite knowledge provided for in Section 2 in circumstances where there was a duty to disclose such information to the claimant, irrespective of whether the duty existed by virtue of a contract or of a provision made by or under a statute or independently of any contract or any such provision or whether the claimant had made a request for such information, the burden shall be on the defendant to prove that he had properly discharged his obligations to provide such information or that the claimant had not taken all reasonable steps to obtain the relevant information.
- (3) All facts and matters falling exclusively within the subjective or objective knowledge of the claimant shall be proved by the claimant.
- (4) In any case, whether in the course of judicial or extrajudicial proceedings, where the defendant pleads the limitation defence, the claimant shall be allowed a reasonable opportunity to adduce appropriate evidence and to rebut any new evidence relied upon by the defendant in order to challenge the limitation defence raised by the defendant under Article 21.

Section seven
Discretionary power of the court

Article 25 – Court’s discretionary power.

(1) The competent court may direct that the defence provided for in Section Six of this Regulation shall not apply in relation to claims for serious injuries and fatal accidents where it is satisfied, equitably having regard to -

- (a) any prejudice which would be caused to the defendant if such direction were given, and
- (b) any prejudice which would be caused to the claimant if such direction were not given,

that it would be unjust and unfair not to give such a direction.

(2) In acting under this Article the court must take into account:

- (a) the length of, and reasons for, the delay on the part of the claimant;
- (b) the effect of the passage of time on the ability of the defendant to defend the claim;
- (c) the effect of the passage of time on the cogency of any evidence adduced or likely to be adduced by the claimant or the defendant;
- (d) the conduct of the defendant after the damaging event, including the extent (if any) to which he responded to requests reasonably made by the claimant for information or inspection for the purpose of discovering facts which were or might be relevant to the claim;
- (e) the extent to which the claimant acted promptly and reasonably once he knew that he might be entitled to make the claim;
- (f) the steps, if any, taken by the claimant to obtain medical, legal or other expert advice and the nature, extent and quality of any expert advice he may have received;
- (g) the steps, if any, taken by the defendant to obtain medical, legal or other expert advice and the nature, extent and quality of any expert advice he may have received;
- (h) any alternative remedy or compensation effectively available to the claimant;
- (i) the strength of the claimant’s case, and
- (j) any other relevant circumstances.

(3) The application of this Article must be pleaded by the claimant at the first hearing or within the first statement following reliance on the defence provided for in Article 21.

(4) For the purposes of subparagraph (3) the claimant shall be allowed to complete his evidence or adduce new evidence in order to support any application under this Article.

Section eight
Effects of a successful limitation defence

Article 26 – Effects.

(1) The defendant who successfully relies upon the defence based on the expiry of the limitation period shall not be liable to compensate the claimant for the damages claimed.

(2) The expiry of the limitation period does not extinguish any rights or actions connected with the claimant’s claim, but only bars the enforcement of such a claim for damages against the defendant and/or the person liable, unless the person liable is uninsured.

Article 27 – Payment of damages in the case of the expiry of limitation period.

No recovery is allowed of any sums paid in fulfilment of a claim barred by the expiry of the relevant limitation period.

Section nine
Multiple claimants and multiple defendants

Article 28 – Multiple claimants.

- (1) Whenever there is more than one claimant, the expiry of the limitation period shall be assessed separately in relation to each claimant.
- (2) Where the defence under Section Six is available against one or more of the claimants but not all the claimants, the defence shall not apply against those remaining claimants whose claims are not barred by Article 21.

Article 29 – Multiple defendants.

Whenever there is more than one defendant and where the defence under Section Six is available against the claimant, Article 26 (1) above applies to each defendant in cases where each defendant is liable jointly or jointly and severally for the damages claimed by the claimant.

Chapter III
Miscellaneous provisions & Final clauses

Article 30 – Entry into force and application in time.

- (1) This Regulation shall enter into force six months after its publication in the *Official Journal of the European Communities*.
- (2) This Council Regulation shall be binding in its entirety and directly applicable in all the Member States in accordance with the Treaty establishing the European Community.
- (3) It shall apply to claims for damages arising out of any accident occurring after its entry into force.

Article 31 – Relationship with existing EC laws.

The provisions of this Regulation shall prevail over all previous provisions contained in any Council Regulation or Directive whenever any claim falls within the material scope of this Regulation.

Done at Brussels, [...].

For the European Parliament
The President

For the Council
The President